

REMARKS

At the outset, the Examiner is thanked for the thorough review and consideration of the pending application. The Office Action dated August 14, 2009 has been received and its contents carefully reviewed.

Claims 1, 7, 15, 18, and 19 are hereby amended. No new matter has been added. Claim 8 was previously canceled. Claims 14, 16, 17, and 20 are hereby canceled without prejudice to or disclaimer of the subject matter contained therein. Accordingly, claims 1-7, 9-13, 15, and 18-19 are currently pending. Reexamination and reconsideration of the pending claims is respectfully requested.

In the Office Action, claim 1 is objected to for informalities noted therein. *Office Action* at p.2, ¶ 1. Claim 1 has been amended to correct the inadvertent typographical error. Accordingly, Applicant respectfully requests withdrawal of the objection to claim 1.

Claims 1-7 and 9-20 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,431,294 to Stottmann et al. (hereinafter “Stottmann”). *Office Action* at p.2, ¶ 3. The rejection of claims 14, 16, 17, and 20 is moot as these claims are canceled herein. Applicant respectfully traverses the rejection of the remaining claims and requests reconsideration.

Independent claim 1 is allowable over the cited reference in that claim 1 recites a combination of elements including, for example, “a cap adapted to straightly move up and down by sliding along the basket handle, the cap having a hole through which the silverware passes, wherein a height of the cap is changed by moving the cap straightly up and down along the basket handle, and the silverware can be inserted in the basket through the hole and supported by the cap regardless of the height of the cap.” *Stottmann* does not disclose, expressly or inherently, at least these features of the claimed invention.

Claim 1 recites “a cap adapted to straightly move up and down by sliding along the basket handle, the cap having a hole through which the silverware passes.” The Office construes

Stottmann's cover 65 which is configured to be rotated along the bar 60 as the “cap” recited in independent claim 1. *Office Action* at p.2-3, ¶ 4. *Stottmann*, however, fails to disclose, explicitly or inherently, that the cap is “straightly moved up and down,” as recited in claim 1. The Office asserts that “Webster’s Third International Dictionary defines the word slide as ‘to go with a smooth continuous motion’ or ‘to change position or become dislocated; shift; slip’.” *Office Action* at pp. 2-3. Even if one of ordinary skill in the art construed the word “slide” as suggested by the Office, *Stottmann* fails to disclose, expressly or inherently, that the cap moves straightly up and down.

Furthermore, claim 1 recites that “a height of the cap is changed by moving the cap straightly up and down along the basket handle, and the silverware can be inserted in the basket through the hole and supported by the cap regardless of the height of the cap.” In contrast, the cover 65 of *Stottmann* is configured to be rotated along the bar between the vertical position and the horizontal position. *Stottmann* at Figs. 2 and 3 and the associated text. In that, the height of the cover is not changed, the cover is just rotated. The height of the cap of the present invention is changeable according to the length of the silverware. When the height of the cap is adjusted, the silverware in the basket that is longer than the height of the basket can be held more securely therein. Thus, *Stottmann* does not disclose, expressly or inherently, all of the features as recited in independent claim 1.

Additionally, silverware can not be inserted in *Stottmann's* basket 31 through the cover 65 when the cover 65 is in the vertical position. Therefore, the cover 65 of *Stottmann* cannot support the silverware while the silverware is inserted in the basket. In contrast, Applicant claim 1 recites that “the silverware can be inserted in the basket through the hole and supported by the cap regardless of the height of the cap.” Thus, *Stottmann* does not disclose, expressly or inherently, all of the features as recited in independent claim 1.

Independent claim 7 is allowable over *Stottmann* in that claim 7 recites a combination of elements including, for example, “a cap support formed to be extended in up and down direction at side surfaces of the basket handle; a guide slot formed to be extended in up and down direction at the cap support; and a cap having a height-adjusting tab which is inserted into the guide slot,

wherein the cap support extends a predetermined distance perpendicularly upward from a top of the basket, and the cap is straightly moved up and down by sliding of the height-adjusting tab along the guide slot, and the silverware is stored in the basket by passing through the cap and supported by the cap.” *Stottmann* does not disclose, expressly or inherently, at least these features of the claimed invention.

Claim 7 recites that “a cap support formed to be extended in up and down direction at side surfaces of the basket handle” and “a guide slot formed to be extended in up and down direction at the cap support” and “the cap support extends a predetermined distance perpendicularly upward from a top of the basket” and “the cap is straightly moved up and down by sliding of the height-adjusting tab along the guide slot.” The Office construes *Stottmann*’s bar 60 that extends between the arms 56, 57 as the “cap support” recited in independent claim 7 and the space underneath the bar 60 as the “guide slot” recited in independent claim 7. *Office Action* at p.3-4, ¶ 5. *Stottmann* discloses that the bar 60 and the space underneath the bar 60 extends in horizontal direction. *Stottmann* at Fig. 2 and the associated text. Therefore, *Stottmann*’s cover 65 which the Office construes as the “cap” recited in independent claim 7 cannot be straightly moved up and down, and the cover 65 can be moved in horizontal direction by sliding along the bar 60. In that, *Stottmann* does not disclose, explicitly or inherently, that the cap is straightly moved up and down. Thus, *Stottmann* does not disclose, explicitly or inherently, all of the features as recited in independent claim 7.

Furthermore, the Office construes space underneath *Stottmann*’s bar 60 as the “guide slot,” recited in claim 7. *Office Action* at p.3-4, ¶ 5. As seen from Fig. 2 and the associated text, the space formed under the bar 60 does not corresponded to the “cap supporter” as asserted by Office. Also, the extending direction of the space is not in an up and down direction. In contrast, claim 7 recites “a guide slot formed to be extended in up and down direction at the cap support.” Thus, *Stottmann* does not disclose, expressly or inherently, all of the features as recited in independent claim 7.

For at least these reasons, Applicant respectfully requests that the Office withdraw the 35 U.S.C. §102(b) rejection of independent claims 1 and 7. Claims 2-6, 15, 18, and 19 depend from

independent claim 1. Claims 9-13 depend from independent claim 7. It stands to reason that the 35 U.S.C. §102(b) rejection of those dependent claims should be withdrawn as well.

CONCLUSION

All the stated grounds of rejection have been properly traversed, accommodated, and/or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding objection and rejections and that they be withdrawn.

It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance.

If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is requested to call the undersigned attorney at (202) 496-7500 to discuss the steps necessary for placing the application in condition for allowance. All correspondence should continue to be sent to the below-listed address.

If these papers are not considered timely filed by the Patent and Trademark Office, then a petition is hereby made under 37 C.F.R. § 1.136, and any additional fees required under 37

C.F.R. § 1.136 for any necessary extension of time, or any other fees required to complete the filing of this response, may be charged to Deposit Account No. 50-0911. Please credit any overpayment to Deposit Account No. 50-0911.

Respectfully submitted,

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